IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia Corporation,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION FILE NO. 1:10-CV0082 CAP
CITY OF SANDY SPRINGS, GEORGIA, et al.	)	
Defendants.	)	

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Defendants Discriminated Against Plaintiff on the Basis of Religion or Its Religious Beliefs, in Violation of the First Amendment and the Anti-discrimination Provision of RLUIPA.

The RLUIPA provides that "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. §2000cc(2)(b)(2). That section reflects and implements the core principle of the Free Exercise and Establishment Clauses of the First Amendment. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." Larson v. Valente, 456 U.S. 228, 244 (1982). Accord, Allegheny

County v. American Civil Liberties Union, 492 U.S. 573, 591 (1989). The Establishment Clause's prohibition upon governmental imposition of denominational preferences is also central to the Free Exercise Clause: "The two clauses are closely related in their purposes. For instance, the Establishment Clause "'prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause.'" Church of Scientology Flag Service Org. v. City of Clearwater, 2 F. 3d 1514, 1542 (11th Cir. 1993), quoting Valente. See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993). Thus, government imposition of denominational preferences is subject to strict judicial scrutiny, and may be justified only in furtherance of a compelling government interest and only by means that are the least restrictive of religious exercise and equality. Valente, 456 U.S. at 246; Lukumi, 508 U.S. at 531-32. This strict standard is applied whether the denominational preference is facially apparent from a statute, rule or regulation, or whether it arises from the government's preferential application of a facially neutral law. Fowler v. Rhode Island, 345 U.S. 67 (1953)(unequal application of a facially neutral ordinance); Lukumi, 508 U.S. at 534, 537 ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality"). RLUIPA creates a federal civil rights remedy for violations of the core non-discrimination principal, and requires the application of the constitutionally mandated strict scrutiny standard to any such case. Midrash Shepardi v. Town of Surfside, 366 F.3d 1214, 1231 (11th Cir. 2004).

Here, Defendants have construed and applied the City's ordinance to effect a denominational preference that cannot meet the strict scrutiny test. Indeed, Defendants have created the denominational preference by their misapplication of the ordinance and their tortured attempt to redefine its terms.

Defendants' main argument, that Plaintiff is not a "Church" within the Zoning Ordinance's definition of a "Church," is contrary to the text of the Sandy Springs Zoning Ordinance.[1] The ordinance defines a "Church Temple or Other Place of Worship" as "a facility in which persons regularly assemble for religious ceremonies."

According to the Defendants, Plaintiff does not meet the

[1] When the text of the statute is clear, the Court need look no further. Lifestar Ambulance Service, Inc. v. U.S., Dept. of Health and Human Services, 604 F. Supp.2d 1372 (M.D. Ga. 2009). Under Georgia law, a zoning ordinance "should be strictly construed in favor of the property owner, and ambiguities in the language of zoning ordinances should be resolved in favor of the free use of property." Fayette County v. Seagraves, 245 Ga. 196, 197 (1980); Cordele v. Hill, 250 Ga. 628 (1983).

definition of a Church under the Zoning Ordinance (the "Ordinance") because Churches "are defined as an assembly-type use" and Plaintiff's "*primary* use was not for assembly-type *congregational* worship services." Memorandum in Opposition, p. 8 (emphasis added). According to Defendants' separately filed motion for summary judgment, the Ordinance's "definition assumes an assembly-type use for large congregational religious worship services." (Defs.' Memorandum in Support of their Motion p. 5)

The City's attempt to re-write the Ordinance is improper. Nowhere in the ordinance's definition is the word "primary", "large","congregational" or "worship." Only by its after-the-fact gerrymandering of the Ordinance can Defendants argue that Plaintiff does not come within the definition written in 3.3.1.

Plaintiff's primary use is as a church, fitting completely within the definition of the Zoning Ordinance. Plaintiff proposes to use the property as a facility where parishioners regularly come together for daily and weekly services and other regularly scheduled assemblies and religious ceremonies, all of which fit easily within the actual definition in the Ordinance. First, Plaintiff conducts regular congregational Sunday services. Defendants contend that such congregational services are not "large," are not the "primary" religious practice of Scientology, and do not involve "worship" of a deity; but these requirements do not appear in the Ordinance. Second, Plaintiff conducts other regularly scheduled assemblies in the beliefs, conduct, practice and ceremonies of the Scientology religion, known as Training. Training is a central religious practice of Scientology, through which parishioners seek to achieve spiritual salvation. It is conducted regularly, in fact, daily. It typically involves participation of parishioners and Church staff who assemble to participate in Scientology religious education and ceremonies. It is true that Training ceremonies do not have to be "congregational" in nature; however the Zoning Ordinance does not require "congregational" assemblies to constitute a church. Third, Plaintiff provides the central religious practice of auditing to its parishioners. It too, is conducted every day. Such meetings are also not "congregational," but they are central to the practice of the Scientology religion.

The City, therefore, proposes to construe and apply their Ordinance, which contains facially non-discriminatory terms in a manner that would discriminate between churches and religions, based upon the beliefs and practices of the religions and the methods by which they conduct their religious assemblies and ceremonies. It is difficult to imagine a clearer and more dangerous type of denominational preference. Indeed, this is even truer if one were to accept the Defendants' after-the fact revision of the Ordinance as an accurate or binding construction of the Ordinance. If the Ordinance defines a "church" to include only institutions whose religious practices primarily involve congregational worship services, or primary assembly-type as the City now suggests it does, and if the Ordinance thus provides for separate and favorable treatment of such a "church" through the application of its parking regulations, as opposed to the treatment of other religious bodies or institutions, as the City now argues, it would constitute a facially discriminatory ordinance of the type condemned in Valente, 456 U.S. at 244. As in Lukumi, "the problem ... is in the interpretation given to the ordinance by the [City]." 508 U.S. at 537.

Defendants' contention that it "consistently applied the standards from Zoning Ordinance Section 18.2.1 to determine the level of required parking" is incorrect. If Defendants had applied the standards from Section 18.2.1 to Plaintiff, 41 parking spaces would have been required for the 43,916 square feet facility with the largest assembly area of 1,218 square feet, not the arbitrary 130 parking spaces Defendants contend are required. Instead, Defendants invented new standards, applied only to the Church of Scientology, to justify the City's refusal to allow the Church full use of its property. Defendants' application of its Zoning Ordinance creates a classic denominational preference.

The City attempts to defend the denominational preference by arguing that the parking ratios created by the Ordinance's definition of a church should not be applied because Plaintiff's use of the property is non-traditional and different than the use of property by many other churches. The City points to statements by Plaintiff that its use of the chapel is less intensely congregational than that of other churches and that its use of space requires creation of "classrooms" for the training courses, auditing rooms, and administrative "offices." The City then claims that it applied the ratios set forth in the Ordinance for classrooms and offices in determining the parking requirements of the Property, and that it had a compelling interest in doing so to insure public safety and sufficient parking.

The problem is that while Defendants claim to have relied on Plaintiff's own description of its needs as a basis for applying a different standard to Plaintiff than it does to other churches, the City clearly ignored the uncontradicted expert opinion of third party engineers and traffic consultants, as well as the full and complete description of Plaintiff's proposed use of the Property. Critically, Plaintiff uses "classrooms" for its Training, but in a much more diffuse and less intense manner than the typical use of classrooms by schools. Scientology Training can utilize up to five rooms at a time for a single class, with the "class" migrating from one room to another over the course of the day or days. Thus, much more space is required for each class, and conversely the intensity of use (i.e., the number of parishioners per sq. ft. of space) is much less than for a typical class in another institution. Plaintiff also explained that it operates on both a day and an evening basis, with different ministers and staff for each time period. Further, the day and evening staff necessarily use their own auditing rooms and offices; therefore, at least half the auditing rooms and offices would remain unoccupied at any time.

Thus, if the City claims a compelling need to apply different standards to Plaintiff's use of the property than it would apply to other churches, based upon Plaintiff's description of how it will use its facilities, it must do so based on all the factors contained in that description. If there exists a compelling interest (in the form of public safety and adequate parking requirements) for the City to depart from the standards that normally apply to a church, then the least restrictive means to pursue that interest must take into account how Plaintiff will utilize the rooms for Training, auditing, and administrative offices, rather than for the City to craft an unsupported and irrational formula to calculate the parking needs for Plaintiff.

This, the City has failed to do by its own admission. It claims that it carefully analyzed the question of Plaintiff's parking requirements by taking into account that Plaintiff's primary use is not large congregational services, but blatantly concedes that in determining the Plaintiff's parking needs it merely applied a numerical formula to the terms "course rooms" and "offices," ignoring the actual manner and intensity by which the church uses such space. [2]

Moreover, Plaintiff did much more than simply describe to the City that its use of "course rooms," auditing rooms and offices is much less intense than the typical use of such spaces.

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[2] Defendants' claim that the "method of calculating the required parking is consistent with that applied to other multi-use religious facilities similar to Plaintiff" is a blatant falsehood. In all instances when the principal use of the property was as a church within associated accessory uses, Defendants have either strictly applied the Church requirements of Section 18.21 of the Zoning Ordinance or a more liberal interpretation in favor of the church use to require fewer parking spaces, not more. See Plaintiff's Brief in Support of Motion for Partial Summary Judgment, pp. 18-24 for a discussion of the City's parking requirements applied to other churches.

Plaintiff presented the City with professional parking studies prepared by the national engineering firm of Kimley-Horn of similar Scientology churches, which confirmed Plaintiff's description and showed that the actual use of space in such churches generated much lower parking demands than those derived from the City's formulae. See discussion in Plaintiff's Brief in Support of Motion for Partial Summary Judgment at p. 12-15. As Plaintiff shows, Defendants' response to this study was to ignore the results and professional opinion of the experts, and instead to mischaracterize it to justify the City's refusal to permit from using the Property as it sought to do. Id. pp. 14-15.

This kind of result oriented "religious gerrymandering" is precisely what is prohibited under RLUIPA and cases such as Valente, 456 U.S. at 255. The City cannot choose to ignore its own ordinance specifications for churches, on a rationale based upon the specific manner in which Plaintiff will use its space to provide religious services to its parishioners without also taking into account the evidence detailing that the specific manner of such usage will generate a lower level of parking demands, including uncontroverted expert studies showing that such usage would not result in the need for additional parking. Such discriminatory application or construction of the Ordinance with respect to a church religious use of its property fundamentally violates the anti-discrimination provision of RLUIPA and the prohibitions against denominational preferences that comprise the core of the Establishment and Free Exercise clauses.

II. Plaintiff Has Established that It Is Substantially Burdened by Defendants' Rezoning Decision.

A substantial burden is "pressure that tends to force adherents to forego religious precepts or ... mandates religious conduct," Midrash, 366 F.3d at 1227. The Eleventh Circuit's definition is also consistent with that of its sister circuits. See Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 349 (2d Cir. 2007); Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter,456 F. 3d 978, 988 (9th Cir. 2006); Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752,761 (7th Cir. 2003). Other Circuits have held that "[o]nce the organization has bought property reasonably expecting to obtain a permit, the denial of the permit may inflict a hardship upon it." Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d 895, 898-900 (7th Cir. 2005); Cottonwood Christian Ctr. v. Cypress Redev. Agency, 218 F. Supp. 2d 1203, 1226-28 (C.D. Cal. 2002).

The Church has made a prima facie case that Defendants' refusal to approve the entire 43,916 square foot building for church use prohibits it from practicing its religion in accordance with its scriptures. Defendants, therefore, do not recognize the necessity for the Church to provide its congregants with a facility which meets minimum requirements of the Scientology religion. Defendants misconstrue the deposition testimony of Scientology minister, Deborah Danos. Ms. Danos clearly testified that the current facility was meant to be temporary, and that the current facility, having different kinds of courses all taking place in one room is "completely non-standard," and that "when you cannot deliver [church services] in the ideal fashion, people don't come." Doc. 55, Danos Dep. pp. 34, 38. Ms. Danos further testified that the Church will be limited by the reduced space. "We need a given number of rooms and we have a minimum amount of space that's required." Id. p. 112. The 43,916 square foot is the "minimum space that we can have that will house all of the spaces that we need to deliver our religion in the way that it has been prescribed to us." Id. Thus, Defendants' contention that "nothing prevents the Plaintiff from practicing Scientology on the Subject Property" is a fallacy. The Church cannot practice Scientology as prescribed by it scriptures in the space approved by Defendants. Id. [3]

III. Defendants' Zoning Decision Burdening Plaintiff's Free Exercise of Religion Cannot Survive Strict Scrutiny.

Defendants point to no empirical evidence that shows the Plaintiff requires more parking than the Ordinance mandates for churches. The number of required spaces that Defendants have proposed is arbitrary and capricious, as seen by the numerous iterations of the parking requirement calculation recommended by Staff. Defendants have performed no analysis that would refute the findings of traffic experts Kimley-Horn that the parking required by a plain reading of the Zoning Ordinance and proposed by Plaintiff would be more than sufficient to meet its needs.[4]

Defendants' doomsday scenario that overflow from Plaintiff's property will inevitably burden neighboring properties due to the

[3] Defendants' contention that they approved the Subject Property for "full use of its existing improved 32,053 sq. ft. facility as a church" is untrue. Defendants did not approve any of the basement floor, which is completely enclosed and sub-divided into various spaces, including office spaces, mechanical rooms, storage, and 30 parking spaces. Doc. 55, Danos Dep. p. 60.

[4] Defendants cite deposition testimony of Sandy Springs traffic engineer, Mark Moore, out of context. Mr. Moore found that the 36,000 average daily trips on Roswell Road and the 17,000 trips per day on Glenridge Drive were not enough to affect the level of service ("LOS") of the operation of that intersection, that adding the volume proposed by the Church's 43,916 sq. ft. building did not change the LOS in the peak times, and that access to the Subject Property was adequate for the purposes of intended use on the site. Doc. 44-3, Moore Dep. pp. 36,37.

lack of off-site paid or public parking within the vicinity is unmitigated speculation and contrary to expert opinion. Defendants' Staff actually found that the entire 43,916 square foot building could be "recommended for approval by staff if the applicant can demonstrate that the on-site parking will be sufficient to meet the full use of the proposed building including the expansion through either a parking study or shared parking analysis." Plaintiff provided parking studies, which showed the proposed parking was more than adequate, yet Defendants ignored and mis-characterized those studies and substituted their own non-expert, unsubstantiated parking formula for the parking ratio required by the Zoning Ordinance and applied in all other cases.

Defendants' contention that denial of the requested building square footage was the only method to ensure that the Church would not be under-parked is wrong. Alternate Conditions were recommended for approval by Staff and presented to Defendants, which in Staff's judgment addressed the perceived parking problem. Doc. 38-5, Leathers Dep., Ex. D-5. These Alternative Conditions are the very definition of "less restrictive means." [5]

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[5] During the negotiations with Staff for the Alternative Conditions, Plaintiff offered to obtain off-site parking. (Staff Report for Sept. 17, 2009, pg. 19.)

Defendants could have addressed any remaining parking concerns in numerous ways, such as requiring off-site parking be provided, or prohibiting cars from entering the site if the lot was full. However, Defendants took the position that it was not their obligation to suggest a more narrowly tailored method for achieving their stated interest. Id. p. 25. Accordingly, Defendants have neither identified a compelling governmental interest that would justify the denial; nor did they use the least restrictive means to achieve that interest.

CONCLUSION

For all of the foregoing reasons, the Court should grant Plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to the Clerk of Court using the CM/ECF system, which automatically sends an electronic mail notification of such filing to counsel of record who are CM/ECF participants, and mailed by United States Postal Service, first-class, mail, postage prepaid, a paper copy of the same document to counsel of record who are non-CM/ECF participants. Counsel of record is:

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This 26th day of January 2011.

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